

TENTATIVE RULINGS for CIVIL LAW and MOTION

September 21, 2012

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at www.yolo.courts.ca.gov. If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Fifteen: (530) 406-6722

TENTATIVE RULING

Case: **California Clean Energy Committee v. City of Woodland**
Case No. CV PT 11-2146

Hearing Date: **September 21, 2012** **Department Fifteen** **8:30 a.m.**

In ruling upon a motion to tax costs, the Court's first determination is whether the statute expressly allows the particular item and whether it appears proper on its face. "If so, the burden is on the objecting party to show [the costs] to be unnecessary or unreasonable." (*Nelson v. Anderson* (1999) 72 Cal.App.4th 111, 131.) Where costs are not expressly allowed by the statute, the burden is on the party claiming the costs to show that the charges were reasonable and necessary. (*Id.* at p. 132.) An item neither specifically allowable under section 1033.5(a) nor prohibited under section 1033.5(b) may nevertheless be recoverable in the court's discretion. (Code Civ. Proc., § 1033.5, subd. (c)(4).)

The Court rules upon petitioner California Clean Energy Commission's motion to tax costs as follows:

Memorandum of costs filed by respondent City of Woodland:

1. Item 1 in the amount of \$119.90: The motion to tax this item of cost is **GRANTED**. This item is comprised of courier fees for delivery of documents to be filed with the Court. Costs for courier or messenger fees are not specifically enumerated as allowable costs in Code of Civil Procedure section 1033.5, subdivision (a), neither are they prohibited in subdivision (b). Thus, messenger fees may be recoverable in the trial court's discretion if "reasonably necessary to the conduct of the litigation." (Code Civ. Proc., § 1033.5, subd. (c)(2); compare, *Ladas v. California State Auto Assn.* (1993) 19 Cal.App.4th 761, 776 [a declaration provided evidence of necessity of charges].) Respondent does not demonstrate with any evidence that the claimed courier fees were reasonably necessary to the conduct of the litigation, and not merely incurred for convenience.

2. Item 13:
- a. Federal Express charges in the amount of \$45.45: The motion to tax this item of cost is **GRANTED**. This item is not an allowable cost. (Code Civ. Proc., § 1033, subd. (b)(3).) Respondent fails to demonstrate that this cost was reasonably necessary to the conduct of the litigation.
 - b. Costs for exhibits for trial in the amount of \$38.79: The motion to tax this item of cost is **GRANTED**. The cost for exhibits may be allowed if they were reasonably helpful to aid the trier of fact. (Code Civ. Proc., § 1033, subd. (a)(13).) These exhibits were not used at trial, and the request does not fall within the exceptional circumstances at issue in *Applegate v. St. Francis Lutheran Church* (1994) 23 Cal.App.4th 361, 364, or *Regan Roofing Co. v. Superior Court* (1994) 21 Cal.App.4th 1685, 1710.
3. Cost for staff time in the amount of \$6,896.40 and Raney Planning and Management time to prepare the record: The motion to tax this item of cost is **GRANTED**. The case of *St. Vincent's School for Boys, Catholic Charities CYO v. City of San Rafael* (2008) 161 Cal.App.4th 989, holds "that where necessary to preserve the statutory purposes of cost containment and expediting CEQA litigation, the prevailing party in a CEQA action may recover 'reasonable costs or fees imposed for the preparation' of the record, even if the non-prevailing party elected to prepare the record pursuant to [section 21167.6(b)(2)]." (*Id.* at p. 1019.) In *St. Vincent's*, however, the court of appeal premised its holding on the fact that the petitioner in that case ignored its statutory duty to restrain costs by making repeated "broad, unrestricted, and, apparently non-essential, discovery demands" on the respondent. (*Ibid.*) Under those circumstances, the court of appeal found that there had been "a complete abandonment [by petitioner] of its statutory responsibility to 'strive to [prepare the record] at reasonable cost.'" (*Ibid.*, emphasis added.) Respondent here concedes that petitioner did not make the same extraordinary requests that the petitioner in *St. Vincent's* did. (Opposition, p. 7:16-17.) Based on the evidence petitioner presents, the Court does not find that the circumstances warrant an award of costs to respondent in order "to preserve the statutory purposes of cost containment and expediting CEQA litigation." (*Ibid.*) The cases cited by respondent do not compel a contrary finding. None address the circumstance where the petitioner has elected to prepare the record. (*Wagner Farms v. Modesto Irr. Dist.* (2006) 145 Cal.App.4th 765, 769 [plaintiffs requested that respondent prepare the record]; *River Valley Preservation Project v. Metropolitan Transit Development Bd.* (1995) 37 Cal.App.4th 154, 180 [preservation group requested that the city agency prepare the record]; *Citizens for Quality Growth v. City of Mt. Shasta* (1988) 198 Cal.App.3d 433, 447 [plaintiffs requested that the city prepare the record].) Contrary to respondent's suggestion, *Protect Our Water v. County of Merced* (2003) 110 Cal.App.4th 362, did not address whether an award of costs was appropriate to compensate a respondent for certifying the accuracy of the record. Therefore, this case is not instructive on whether respondent should be awarded costs for merely certifying the record's accuracy.

Memorandum of costs filed by real party in interest Petrovich Development Company:

1. Item 1 in the amount of \$790.00: The motion to tax this item of cost is **DENIED**. This item is comprised of filing fees incurred to file documents with the Court, and is an

allowable cost item. (Code Civ. Proc., § 1033.5, subd. (a)(1).) Petitioner does not demonstrate that the cost item is unnecessary or unreasonable.

2. Item 13 in the amount of \$169.85: The motion to tax this item of cost is **GRANTED**. This item is comprised of courier fees for delivery of documents to be filed with the Court. This is not an allowable cost item. Real party does not demonstrate with any evidence that the claimed courier fees were reasonably necessary to the conduct of the litigation, and not merely incurred for convenience.

The notice of motion does not provide notice of the Court's tentative ruling system as required by Local Rule 11.4(b). Counsel for moving party is ordered to notify the opposing party or parties immediately of the tentative ruling system and to be available at the hearing, in person or by telephone, in the event the opposing party or parties appear without following the procedures set forth in Local Rule 11.4(a).

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice, except as provided herein, is required.

TENTATIVE RULING

Case: **Crossroads Investors, LP v. Federal National Mortgage Association**
Case No. CV CV 12-1067

Hearing Date: **September 21, 2012** **Department Fifteen** **8:30 a.m.**

- I. Defendant Federal National Mortgage Association's ("FNMA") special motion to strike the first amended complaint of plaintiff Crossroads Investors, LP:

Crossroad Investors, LP's request for judicial notice is **GRANTED**. (Evid. Code, § 452, subd. (d).)

FNMA's request for judicial notice is **GRANTED**. (Evid. Code, § 452, subds. (c) & (d).) As to Exhibits 1 and 2, the Court takes judicial notice of the fact of the documents' recordation, the dates the documents were recorded and executed, the parties to the transaction reflected in the documents, and the documents' legally operative language. (*Fontenot v. Wells Fargo Bank* (2011) 198 Cal.App.4th 256, 264-67.) As to Exhibits 3 through 10, the Court takes judicial notice of the findings made and entered as reflected in the documents, but not of their truth.

FNMA's special motion to strike the entirety of the first amended complaint under Code of Civil Procedure section 425.16 is **DENIED**. Defendant has not made a threshold showing that the plaintiff's cause of action is one arising from protected activity under section 425.16. (*Garretson v. Post* (2007) 156 Cal.App4th 1508.) The gravamen of plaintiff's first amended complaint is its contention that defendant wrongfully foreclosed upon the subject property in an illegally conducted non-judicial foreclosure.

- II. FNMA's demurrer to plaintiff's first amended complaint:

The demurrer to the first cause of action for wrongful foreclosure is **OVERRULED**. Plaintiff sufficiently alleges it offered to tender the full amount required to cure its default, but FNMA

refused to accept such tender in violation of Civil Code section 2924c. (Plaintiff's first amended complaint ("FAC"), ¶¶ 13, 14, & 32; Code Civ. Proc., §§ 430.10, subds. (e) & (f), 2924 et seq.; *Traders Sports, Inc. v. City of San Leandro* (2001) 93 Cal.App.4th 37, 43; *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604; *Arnolds Management Corp. v. Eischen* (1984) 158 Cal.App.3d 575; *Khoury v. Maly's of Calif., Inc.* (1993) 14 Cal.App.4th 612, 616.)

The demurrer to the second cause of action, but labeled as the fifth cause of action within the FAC, for fraud/false promise is **OVERRULED**. Plaintiff alleges that on May 17, 2012, FNMA's counsel, Anthony Napolitano, promised plaintiff that he would notify plaintiff of any scheduled sale date for the subject property. (FAC, ¶ 57.) Plaintiff also alleges FNMA never intended to inform plaintiff of the trustee's sale in order to prevent plaintiff from exercising its rights to redeem the subject property or outbid FNMA and/or JCM Properties, Inc. (*Id.* at ¶¶ 59-62.) Plaintiff sufficiently alleges facts showing, "how, when, where, to whom, and by what means the alleged misrepresentation was tendered." (Code Civ. Proc., §§ 430.10, subds. (e) & (f), 2924 et seq.; *Traders Sports, Inc. v. City of San Leandro* (2001) 93 Cal.App.4th 37, 43; *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604; *Khoury v. Maly's of Calif., Inc.* (1993) 14 Cal.App.4th 612, 616; *Lazar v. Superior Court of Los Angeles County* (1996) 12 Cal.4th 631, 645; *Tenzer v. Superscope, Inc.* (1985) 39 Cal.3d 18, 29-31; *Tarmann v. State Farm Mut. Auto. Ins. Co.* (1991) 2 Cal.App.4th 153, 159.)

The demurrer to the third cause of action, but labeled as the fourth cause of action within the FAC, for negligence is **OVERRULED**. (Code Civ. Proc., §§ 430.10, subds. (e) & (f), 2924 et seq.; *Traders Sports, Inc. v. City of San Leandro* (2001) 93 Cal.App.4th 37, 43; *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604; *Khoury v. Maly's of Calif., Inc.* (1993) 14 Cal.App.4th 612, 616; *Anderson v. Heart Federal Sav. & Loan Assn.* (1989) 208 Cal.App.3d 202; *Susilo v. Wells Fargo Bank, N.A.* (C.D.Cal. 2011) 796 F.Supp.2d 1177, 1187-1188.)

The demurrer to the fourth cause of action, but labeled as the second cause of action within the FAC, for breach of contract is **OVERRULED**. (Code Civ. Proc., §§ 430.10, subds. (e) & (f), 2924 et seq.; *Traders Sports, Inc. v. City of San Leandro* (2001) 93 Cal.App.4th 37, 43; *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604; *Khoury v. Maly's of Calif., Inc.* (1993) 14 Cal.App.4th 612, 616; *Lortz v. Connell* (1969) 273 Cal.App.2d 286, 290.)

The demurrer to the fifth cause of action, but labeled as the third cause of action within the FAC, for breach of the implied covenant of good faith and fair dealing is **OVERRULED**. (Code Civ. Proc., §§ 430.10, subds. (e) & (f), 2924 et seq.; *Traders Sports, Inc. v. City of San Leandro* (2001) 93 Cal.App.4th 37, 43; *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604; *Khoury v. Maly's of Calif., Inc.* (1993) 14 Cal.App.4th 612, 616; *Guz v. Bechtel Nat. Inc.* (2000) 24 Cal.4th 317, 349; *Careau & Co. v. Security Pacific Business Credit, Inc.* (1990) 222 Cal.App.3d 1371.)

The demurrer to the sixth cause of action for promissory estoppel is **OVERRULED**. The issue of whether plaintiff's reliance was justified is a question of fact, as plaintiff states sufficient facts to support a cause of action for promissory estoppel. (Code Civ. Proc., §§ 430.10, subds. (e) &

(f), 2924 et seq.; *Traders Sports, Inc. v. City of San Leandro* (2001) 93 Cal.App.4th 37, 43; *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604; *Khoury v. Maly's of Calif., Inc.* (1993) 14 Cal.App.4th 612, 616; *Alliance Mortgage Co. v. Rothwell* (1995) 10 Cal.4th 1226, 1239; *Lazar v. Superior Court of Los Angeles County* (1996) 12 Cal.4th 631, 645; *Tenzer v. Superscope, Inc.* (1985) 39 Cal.3d 18, 29-31; *Tarmann v. State Farm Mut. Auto. Ins. Co.* (1991) 2 Cal.App.4th 153, 159.)

The demurrer to the seventh cause of action for intentional interference with a contractual relationship is **OVERRULED**. (Code Civ. Proc., §§ 430.10, subds. (e) & (f), 2924 et seq.; *Traders Sports, Inc. v. City of San Leandro* (2001) 93 Cal.App.4th 37, 43; *Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604; *Khoury v. Maly's of Calif., Inc.* (1993) 14 Cal.App.4th 612, 616; *Shamblin v. Berge* (1985) 166 Cal.App.3d 118.)

III. FNMA's motion to strike plaintiff's claim for punitive damages:

The motion to strike paragraphs 66 and 70, and paragraph 6 of the prayer of the FAC requesting punitive damages is **DENIED**. (Code Civ. Proc., § 435 et seq.)

The notices of motion do not provide the correct address for Department 15. Department 15 is located at 1100 Main Street, in Suite 300, in Woodland.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312, or further notice is required.